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In the

Supreme Court of the United States

CAVEL INTERNATIONAL, INC., *et al.*,

Petitioners,

v.

LISA MADIGAN, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeal for the Seventh Circuit

BRIEF *AMICI CURIAE* FOR THE AMERICAN QUARTER HORSE ASSOCIATION, THE AMERICAN ASSOCIATION OF EQUINE PRACTITIONERS, THE PALOMINO HORSE BREEDERS OF AMERICA, THE PINTO HORSE ASSOCIATION OF AMERICA, THE AMERICAN PAINT HORSE ASSOCIATION, AND THE HORSEMEN'S COUNCIL OF ILLINOIS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

PAGE

INTEREST OF THE *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 4

ARGUMENT 8

THE PETITION SHOULD BE GRANTED TO ALLOW CONSIDERATION OF WHETHER A COURT OF APPEALS' SELF-AUTHORED RELIANCE ON A LEGITIMATE STATE INTEREST IN THE HUMANE TREATMENT OF HORSES IS SUFFICIENT TO UPHOLD A STATUTE THAT HAS ACTUALLY CAUSED GREATER SUFFERING FOR HORSES. 8

A. THE ILLINOIS SLAUGHTER BAN HAS NOT PROMOTED THE HUMANE TREATMENT OF HORSES, BUT HAS INSTEAD INCREASED THEIR ABANDONMENT, NEGLECT AND SUFFERING. 10

B. WITHOUT PROVISION FOR THE CARE OF UNWANTED HORSES, THE ILLINOIS BAN ON SLAUGHTER CAN ONLY BE A "STEP" IN THE WRONG DIRECTION. 19

CONCLUSION 23

TABLE OF AUTHORITIES

Cases **PAGE(S)**

Bowen v. Owens,
476 U.S. 340 (1986) 20

Cavel Int'l, Inc. v. Madigan,
500 F.3d 544 (7th Cir. 2007) 8, 21

Cavel Int'l, Inc. v. Madigan,
500 F.3d 551 (7th Cir. 2007) ..... *passim*

Hughes v. Oklahoma,
441 U.S. 322 (1979) 8

Pike v. Bruce Church, Inc.,
397 U.S. 137 (1970) 8

Williamson v. Lee Optical of Oklahoma,
348 U.S. 483 (1955) 20

CONSTITUTIONAL PROVISIONS

U.S. Const. Article I, § 8, cl. 3 8

STATUTES, REGULATIONS AND ORDINANCES

Humane Methods of Livestock Slaughter Act., 7 U.S.C. § 1901 et seq. 13

7 U.S.C. § 1902(a) 13

9 C.F.R., Part 88 13

Illinois House Bill 1711, Public Act 95-0002 ..... *passim*

Illinois Humane Slaughter of Livestock Act, 510 Ill. Comp. Stat. 75/1 13

City of Chicago, Illinois Municipal Code § 7-12-330 13

Village of Round Lake, Illinois Municipal Code § 6.08.110 13

LEGISLATIVE MATERIALS

The Horse Protection Act: Hearing on H.R. 503 before the H. Comm. on Agriculture, 109th Cong., July 27, 2006 ..... 11, 14, 22

PERIODICALS AND DATABASE MATERIALS

James J. Ahern, et al., *The Unintended Consequences of a Ban on the Humane Slaughter (Processing) of Horses in the United States*, http://www.animalwelfarecouncil.com/html/pdf/consequences.pdf 12, 13, 15

Karen Binder, "*It's 200 Times Worse*," The Southern Illinoisan, March 12, 2008, http://www.southernillinoisan.com/articles/2008/03/12/front_page/23693704.txt. 16

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Richard Cockle, *They Abandon Horses, Don't They?: The Rising Price of Hay and the Last U.S. Slaughterhouse's Closure Puts Pressure on Owners Who Can't Afford to Keep Their Animals*, The Oregonian, November18,2007, http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/1195178173302820.xml&coll=7 15

Catrin Einhorn, *Horses Spared in U.S. Face Death Across the Border*, N.Y. Times January 11, 2008, http://www.nytimes.com/2008/01/11/us/11horse.html 16

T.H. Friend, *A Review Of Recent Research On The Transportation Of Horses*, 79 J. Anim. Sci. (E. suppl.) E32 (2001) 18

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JAMVA News Express, *U.S. Horse Slaughter Exports to Mexico Increase 312%*, http://www.avma.org/onlnews/javma/jan08/x080115a.asp 16

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Paulo Prada, *Leaner Pastures: As Horses Multiply, Abuse Cases Rise: Boomers Bought Them but Can't Afford Upkeep: The Slaughterhouse Factor*, Wall St. J., January 7, 2008, http://online.wsj.com/public/article/SB119967115694171373y4MY_PJ9evNfT565sq1RfwOKu7E_20080205.html?mod=tff_main_tff_top. 12, 15

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M.J. Toscano, *et al.*, *A Note On The Effects Of Forward And Rear-Facing Orientations On Movement Of Horses During Transport*, 73 Appl. Anim. Behav. Sci. 281 (2001) 18

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INTEREST OF THE *AMICI CURIAE*

Amici curiae are all organizations dedicated to the welfare and well-being of horses. Their members are involved in the lives and care of horses on a daily basis.[1]

The American Quarter Horse Association is an international organization headquartered in Amarillo, Texas that issues and maintains the pedigrees and registration records of all American Quarter Horses. The Association has over 345,000 members worldwide, 305,000 of them in the United States. They participate as hobbyists, amateurs and professionals in a broad spectrum of horse-related activities from recreational riding to horse shows to horse racing. Its members are devoted to the welfare of the American Quarter Horse breed, as well as to that of all horses. In addition to programs devoted to equine activities, the Association operates as an information center for its members and the general public regarding issues related to the Quarter Horse breed and to equine issues in general.

The American Association of Equine Practitioners is an international organization of veterinary practitio-

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[1] Pursuant to Supreme Court Rule 37.6, *Amici* state that no counsel for a party has authored this brief, in whole or in part, and no person or entity other than *Amici* or its counsel has made a monetary contribution to the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2(a), Counsel of Record for all parties received timely notice of the intent of *Amici* to file this brief. Pursuant to Supreme Court Rules 37.2(a) and 37.3(a), Counsel of Record for all parties have consented to the filing of this brief; their letters to that effect are submitted to the Court with this brief.

ners and students headquartered in Lexington, Kentucky. It is dedicated to the health and welfare of the horse. Its more than 9,500 members specialize in the care of horses and are actively involved in ethics issues, practice management, research and continuing education in the equine veterinary profession and the horse industry.

The Palomino Horse Breeders of America, headquartered in Tulsa, Oklahoma, has approximately 10,000 members. It is dedicated to the welfare and humane treatment of all horses, and to the Palomino breed in particular. It is active in the registration, training and exhibition of horses, including the establishment of rules designed to assure the humane and dignified treatment of horses in exhibition.

The Pinto Horse Association of America, headquartered in Bethany, Oklahoma, has more than 13,000 individual members and over 45 member horse owner clubs nationwide. It is dedicated to promoting the welfare of the Pinto horse breed and of all horses. It is active in registration, training, educational and marketing activities.

The American Paint Horse Association is an international organization with more than 84,000 members in the United States and over 93,000 worldwide; in addition, it represents more than 100 regional horse owner clubs, 85 of them in the United States. Its headquarters is in Fort Worth, Texas. It is dedicated to the welfare of the American Paint Horse breed, including its care and breeding, education about the breed and support of owners of American Paint Horses.

The Horsemen's Council of Illinois is a statewide coalition of horsemen and horsewomen that works to promote the common interests of all Illinois horse owners, including the care, health and well-being of their horses. It represents some 1,100 individual members as well as more than 20 horse owner groups within Illinois, with a total membership of more than 10,000 individuals.

Because of their dedication to the welfare of horses of all breeds, these organizations have a strong interest in the outcome of this case. Illinois House Bill 1711, Public Act 95-0002 (hereinafter "Illinois H.B. 1711" or "H.B. 1711") may on its face appear to promote the welfare of horses by banning their slaughter for human consumption. But *Amici*, all deeply involved in that cause on a daily basis, know that precisely the opposite is true. *Amici* do not, by any means, endorse the slaughtering or processing of horses. Instead they simply recognize, as a practical matter, that for horse owners who are not willing or able to provide proper care for a horse, ending that horse's life under humane and regulated conditions is preferable to suffering, inadequate care or abandonment.

Contrary to what may be conventional notions, upholding Illinois' ban on horse slaughter, as *Amici* will explain, will lead (and in fact already has led) to *more* suffering for *more* horses of all breeds in this country, and not less. This is anathema to *Amici*. *Amici* hope, by this brief, to bring to the Court's attention information about the real consequences of the Illinois statute, for horses, for their owners, and for the efforts of those who genuinely seek to promote

their welfare. By filing this brief *Amici* wish to demonstrate the importance of issues posed by the Petition in this case, including whether the Court of Appeals' judicially fashioned basis for upholding the Illinois statute is, in fact, "legitimate," or whether, as *Amici* know, it is instead distinctly irrational. *Amici* ask the Court to consider this information in light of the realities of horse ownership rather than based on emotional, but impractical, considerations.

SUMMARY OF ARGUMENT

When it reluctantly upheld Illinois' ban on the slaughtering of horses for human consumption, the Court of Appeals seized on what it thought was a legitimate State interest underlying the law: "States have a legitimate interest in prolonging the lives of animals that their populations happen to like." Pet. App. 11a. And the court noted that, while Illinois could do more for its horses than it does, it was allowed to take "one step at a time on a road toward the humane treatment of our fellow animals." *Id.* As noted by Petitioners Cavel International, Inc., *et al.* (hereinafter "Petitioner"), Pet. 26-28, this interest was never advanced by the State in support of Illinois H.B. 1711; instead, it appears to have been simply thought up by the court on its own. It is not surprising to *Amici*, therefore, that such a rationale, resting on no legislative or judicial record, turns out not to reflect reality. It should not be accepted as a "legitimate" basis for upholding Illinois H.B. 1711.

What *Amici* understand, as organizations of people that study, own and are devoted to the welfare of

horses, is that the Court of Appeals' rationale is actually perniciously *irrational*. The law's proponents claim that banning horse slaughter must be good for horses because it means fewer will be killed (or, as the Court of Appeals has it, some of them would lead longer lives). But *Amici* know, from their daily involvement with horses and constant work for their well-being, that this simplistic understanding, which confuses longevity with quality of life, is wrong. The Illinois statute will not promote "humane treatment" of horses merely by prolonging their lives; to the contrary, the unavailability of humane horse processing, conducted under federal standards and supervision, has ended what had been a viable humane alternative to neglect or abandonment for many horse owners who were either unable or unwilling to care for their horses. The swollen populations of horse shelters, reports of increased numbers of abandoned and neglected horses and the increased resort to transportation of horses to Canada or Mexico, often over greater distances, for slaughter under potentially less regulated or even unregulated conditions since Petitioner's plant was closed by the Court of Appeals' ruling attests to the irrationality of the Court of Appeals' reasoning.

First, it is not rational for a court to accept, much less suggest, an interest in prolonging the lives of horses without regard to how those longer lives will be lived. In doing so, the Court of Appeals adopted a distinctly ivory-tower view of the humane treatment of horses, one unfortunately divorced from reality. Since the Illinois ban took effect, the unavailability of humane slaughter under federally regulated and

inspected conditions at Petitioner's facility has led to greater suffering for more horses, an outcome entirely inconsistent with *any* rational notions of humane treatment. Horse owners unable or unwilling to care for horses have abandoned or neglected them in increased numbers. Shelters have taken in those they could, but cannot by any means absorb them all. Some owners, finding the domestic alternative banned, have opted to sell horses for processing in Canada or Mexico, exposing them to transportation and slaughtering practices less regulated, and less humane, than those employed at Petitioner's facility. And researchers conducting experiments designed to advance medical care for horses have lost a significant resource due to their inability to conduct medical testing on slaughter horses. In short, the result of the ban upheld by the Court of Appeals was more horse suffering, not less, entirely undercutting the basis upon which the Court of Appeals upheld the Illinois law.

Second, the Court of Appeals' observation that Illinois could have done more for horses, but was not required to do so, contradicts its own "humane treatment" rationale. The court's conclusion that banning slaughter could be considered as "one step . . . on a road toward the humane treatment" of horses, Pet. App. 11a, is itself irrational. This is so for two reasons. Initially, there are no next "steps" on the horizon. Although the Court of Appeals did not question the notion, now borne out by reality, that banning slaughter would result in an increased number of unwanted horses, somewhat wryly writing of "old-age pastures" for them, Pet. App. 11a, neither

that court nor the State has even suggested that any measures to care for their increased numbers are being considered or could be funded. But the Illinois slaughter ban, which has increased rather than decreased horse suffering, cannot rationally be considered a step toward humane treatment of horses without such measures; instead, it can only be considered a step in the opposite direction. Banning humane slaughter without providing for the care of the unwanted horses that were sure to result—and have resulted—cannot rationally be considered a measure that supported the State's interest in the humane treatment of horses upon which the Court of Appeals claimed to rely in upholding the Illinois ban.

The Court of Appeals' treatment of Illinois H.B. 1711 raises serious issues relating to the application of the "legitimate interest" test in challenges to legislation under the Commerce Clause. *Amici* hope that the Court will take the opportunity presented by the Petition to address these issues on their merits.

ARGUMENT

THE PETITION SHOULD BE GRANTED TO ALLOW CONSIDERATION OF WHETHER A COURT OF APPEALS' SELF-AUTHORED RELIANCE ON A LEGITIMATE STATE INTEREST IN THE HUMANE TREATMENT OF HORSES IS SUFFICIENT TO UPHOLD A STATUTE THAT HAS ACTUALLY CAUSED GREATER SUFFERING FOR HORSES.

Having concluded that Illinois H.B. 1711 burdened foreign commerce, see Pet. App. 13a, the Court of Appeals was obliged to determine that the State of Illinois had a "local interest" in enacting it sufficient to support the legislation, as well as whether this local interest could be satisfied through measures that had less impact on commercial activities. See *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).[2] In this case, though, the State failed to present the lower courts with a "legitimate local interest," see *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979), in support of its ban on the slaughtering of horses. The Court of Appeals' realization that the State had failed even to claim such an interest, much less support it with a legislative or court record, caused it concern. See Pet. App. 63a, 80a-82a (oral argument); see also Pet. App. 45a (opinion granting stay pending appeal: "But the statute does not seem to be intended to protect horses. (The object of the statute is totally obscure.)"). But

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[2] *Amici* support, but see no need to elaborate on, Petitioner's arguments that *Pike* balancing applies to analysis under the Foreign Commerce Clause, U.S. Const. art. I, § 8, cl. 3, and that the issue of whether it does is ripe for consideration by the Court. See Pet. 21-23.

instead of holding the State to the consequences of its failure by invalidating H.B. 1711, the court instead took it upon itself to craft an interest of its own. It held, without the argument ever having been advanced by the State and based on no evidence, that States have "a legitimate interest in prolonging the lives of animals that their populations happen to like." Pet. App. 11a.

In considering the consequences of Illinois' ban, the Court of Appeals did not contest the proposition that ending the practice of humane slaughter at the last such facility in the United States would result in an increase in the number of unwanted horses of the sort that had previously been processed at Petitioner's facility. Indeed, the court acknowledged, with an apparent lack of gravity, that "Illinois could do more for horses than it does—could establish old-age pastures for them, so that they would never be killed (except by a stray cougar) or provide them with free veterinary care." *Id.* But the court reasoned that Illinois was entitled "to take one step at a time on a road toward the humane treatment of our fellow animals." *Id.* (citations omitted).

This case, and the rationale supplied by the Court of Appeals for upholding Illinois H.B. 1711, illustrate why this Court should require State interests to be grounded in facts, and not academic hypothesis, and why "legitimate State interests" must be posed by States themselves and supported by facts of the sort that cannot accompany judicially created rationalizations. Although the Court of Appeals acted as if it knew better than anyone, the experience of *Amici*, who actually live with and care for horses, demon-

strates that its "legitimate interest" analysis, not surprisingly, is not grounded in reality. This Court should grant the Petition to address what should be required, in form and substance, to constitute a "legitimate interest" underlying a state statute.

A. The Illinois Slaughter Ban Has Not Promoted The Humane Treatment Of Horses, But Has Instead Increased Their Abandonment, Neglect And Suffering.

The Court of Appeals' conclusion that Illinois had a legitimate interest in prolonging the lives of horses is both facile on its face and wrong as a matter of fact and experience. It represents, in judicial form, an emotional and reflexive response to the notion of horse slaughter—that because it involves killing horses, it must be bad, and therefore may be banned. But this simplistic reasoning is wrong. *Amici* and their members, whose professional and even personal lives are devoted to the care and well-being of their own horses and the welfare of all horses, do not endorse or advocate horse slaughter and profoundly wish it was, as the Court of Appeals thought, an unnecessary option. But *Amici* and their members abhor the suffering of horses more, and know from experience (as they knew it would before it was enacted and upheld) that the Illinois ban has resulted in a greater number of unwanted horses living, and dying, under worse conditions.

It is a fact of life that over time some horse owners inevitably cannot care for their horses. This problem is hardly confined to those who are less caring; al-

though *Amici* and their members are devoted to their horses, they recognize that at any given time even the most dedicated horse owner may no longer be able to keep a horse. See, *e.g.*, *The Horse Protection Act: Hearing on H.R. 503 before the H. Comm. on Agriculture*, 109th Cong., July 27, 2006 (hereinafter "*Horse Protection Act Hearing*"), at 19 (testimony of Tammy Pate, American Quarter Horse Association) ("We currently own a horse who, if allowed to live, will likely only endure a life of pain and suffering. We are exploring all available options and it may be best for her to end her life at a processing facility."). Owners of horses may come to lack the interest, the will and/or the resources to keep their horses properly and to attend to their welfare; in addition, horses can become unsound or unsafe. See *Id.* at 14 (Testimony of Thomas R. Lenz, D.V.M.) ("A horse can become unwanted because it has failed to meet its owners expectations because of old age, poor performance, or lameness; it may be dangerous; it may present a risk to its handlers; or its owners may no longer be capable of providing physical or financial care."). If some of these horses were good candidates for use, the market for horses would place significantly higher value on them and they could be sold (for a much higher price) instead of being consigned to horse processing facilities. But the bottom line is that "unwanted" horses, or those whose owners are unable to care for them, are a fact of equine life in this country.

For the owners of these horses, the humane alternatives have been adoption by a horse rescue organization or shelter, euthanasia by the owner or a veterinarian, or consignment to a horse processing facility

like that operated by Petitioner. There are obvious distinctions among these options, and the former two are not always practicable. Sheltering horses costs money, see M.S. North, *et al.*, *The Potential Impact of a Proposed Ban on the Sale of U.S. Horses for Slaughter and Human Consumption*, 23 Journal of Agribusiness 1, 14 (2005) ("If these horses are not euthanized, caring for each horse will cost rescue facilities approximately $2,340 per year, depending on location."). And even successful donation to a rescue agency may require some monetary "donation" by an owner to fund the continued care of the animal, a requirement that is understandable but ironic since many horse owners seeking to give away their animal are doing so precisely because they cannot afford its upkeep. Euthanasia and subsequent disposal can also be beyond the financial means of horse owners, in addition to raising legal hurdles. Chemical euthanasia can cost between $60 and $100 for the procedure alone, and the costs of the veterinarian's visit and of disposing of the body can add hundreds or even thousands of dollars in expense. See James J. Ahern, *et al.*, *The Unintended Consequences of a Ban on the Humane Slaughter (Processing) of Horses in the United States*, http://www.animalwelfarecouncil.com/html/pdf/consequences.pdf (May 15, 2006). These costs represent a significant obstacle to many horse owners, more than a third of whom have household incomes of less than $50,000. Paulo Prada, *Leaner Pastures: As Horses Multiply, Abuse Cases Rise: Boomers Bought Them but Can't Afford Upkeep: The Slaughterhouse Factor*, Wall

St. J., January 7, 2008, at A10.[3] In addition, there may be legal hurdles; in Illinois, for example, some municipalities prohibit horse burial. See Ahern, *et al.*, *supra* at 7,8; see also, *e.g.*, City of Chicago, Illinois Municipal Code § 7-12-330; Village of Round Lake, Illinois Municipal Code § 6.08.110.

While it was in operation, Petitioner's facility at least provided horse owners who could not or no longer wanted to keep a horse with another humane option, and one that, unlike shelters or chemical euthanasia, was readily available. It operated in compliance with federal laws, including regulations governing both actual slaughter itself and transportation to Petitioner's facilities, see, *e.g.*, the Humane Methods of Livestock Slaughter Act., 7 U.S.C. § 1901 *et seq.;* 9 C.F.R., Part 88 (Commercial Transportation of Equine for Slaughter); Animal and Plant Health Inspection Service, *Take Care of our Horses: Commercial Transportation of Equines to Slaughter*, http://www.aphis.usda.gov/lpa/pubs/pub_ahhorses.html, as well as state laws, see Illinois Humane Slaughter of Livestock Act, 510 Ill. Comp. Stat. 75/1. And it operated under the observation of inspectors, including veterinarians, employed by the United States Department of Agriculture. Moreover, the method used at Petitioner's facility, known as the "penetrating captive bolt" method, has been accepted as humane under the law and by recognized veterinary authorities. See 7 U.S.C. § 1902(a); American Veterinary Medical Association, *AVMA Guidelines on*

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[3] Also available at http://online.wsj.com/public/article/SB119967115694171373y4-MY_PJ9evNfT565sq1RfwOKu7E_20080205.html?mod=tff_main_tff_top.

Euthanasia 13 (2007), available at http://www.avma.org/issues/animal_welfare/euthanasia.pdf (recognizing only two humane methods: captive bolt and overdose of barbiturate anesthesia); *Horse Protection Act Hearing* at 15 (Testimony of Thomas R. Lenz, D.V.M.) ("The euthanasia method that is used on horses at the processing facilities is a captive bolt . . . It is rapid, and it is humane."); *id.* at 16 (Testimony of Bonnie V. Beaver, D.V.M.) ("[The penetrating captive bolt gun] causes instantaneous death due to the destruction of brain tissue. Let me repeat, instantaneous death."); Temple Grandin, Ph.D, *Recommended Captive Bolt Stunning Techniques for Cattle*, http://www.grandin.com/humane/cap.bolt.tips.html. R.D. Scoggins, D.V.M., equine extension veterinarian at the University of Illinois College of Veterinary Medicine for more than 25 years, visited Petitioner's facility on numerous occasions and observed that its method "is considered by persons qualified in neurology and anesthesia as one of the most humane means of death of available." Les Sellnow, *Illinois Slaughter Ban Tackled by House Committee*, http://news.bloodhorse.com/viewstory.asp?id=20785, February 20, 2004. While *Amici* recognize that any process that causes the death of a horse is distressing, the recognition of Petitioner's methods as humane by law and by the highest veterinary authorities made Petitioner's facility a realistic humane alternative for horse owners who were unable or unwilling to care for their horses and for whom shelters or chemical euthanasia and disposal were not feasible.

Petitioner's facility processed between 40,000 and 60,000 horses a year. Pet. App. at 2a, 11a. Long before the Illinois slaughter ban took effect, and even as Congress considered such a ban itself, those who understand the realities of horse ownership predicted that eliminating this option would not further any governmental interest in the humane treatment of horses, but would instead create a growing population of "unwanted" horses, abandoned and neglected by owners unable or unwilling to care for them and unable to consign them to humane slaughter. See, e.g., Ahern *et al.*, *supra*, at 2 ("The potential for a large number of abandoned or unwanted horses is substantial."). Unfortunately, events since the ban was upheld by the Court of Appeals have proved that these fears were well grounded. The closing of Petitioner's facility has directly contributed to a substantial increase in the numbers of unwanted or abandoned horses, straining shelters and rescue operations beyond their capacity. See, *e.g.*, Prada, *supra* at A** ("Until recently, a little-advertised market for unwanted horses existed at equine slaughterhouses . . . . But the last three such plants closed in 2007, under pressure from animal rights groups. . . ."); Richard Cockle, *They Abandon Horses, Don't They?: The Rising Price of Hay and the Last U.S. Slaughterhouse's Closure Puts Pressure on Owners Who Can't Afford to Keep Their Animals*, The Oregonian, November 18, 2007; at D4, available at http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/1195178173302820.xml&coll=7 ("[M]ore and more people are abandoning unwanted domestic horses on ranches and public lands."); Michael Booth, *No Room at the Pen: Slim Wallets and an End to U.S.*

Slaughterhouses Flood Rescue Centers with Horses and Few Options for Dealing with Them, The Denver Post, February 17, 2008, at A1, available at http://www.denverpost.com/news/ci_8284227 (" 'Horses are starving' said Janiejill Tointon, a breeder-rancher in Boulder and Walden. 'Shutting down the processing (slaughter) plants was probably the worst thing they've ever done for horses. It makes me crazy when animals are suffering.' "); Karen Binder, *"It's 200 Times Worse"*, The Southern Illinoisan, March 12, 2008, http://www.southernillinoisan.com/articles/2008/03/12/front_page/23693704.txt. In addition, some owners of unwanted horses, who might previously have sold them to be consigned them to Petitioner's regulated and inspected facility, have instead sold them to be consigned to processing facilities still operating in Mexico and Canada, subjecting them to longer (and unregulated) trailer rides and less regulated or unregulated, and potentially less humane, methods. See Catrin Einhorn, *Horses Spared in U.S. Face Death Across the Border*, N.Y. Times January 11, 2008, at A10, available at http://www.nytimes.com/2008/01/11/us/11horse.html; *U.S. Horse Slaughter Exports to Mexico Increase 312%*, JAMVA News Express, http://www.avma.org/onlnews/javma/jan08/x080115a.asp; Sam Blackwell, *Closing of U.S. Slaughterhouses Limits Options for Getting Rid of Marginal Horses*, The South East Missourian, March 11, 2008, http://www.semissourian.com/apps/pbcs.dll/article?AID=/20080311/NEWS01/873221880/-1/news01 ("In the past, some owners sent marginal horses to a kill market, Jackson equine veterinarian Dr. Linus Huck said. Now some

of those horses are being neglected. He thinks shutting down the horse slaughterhouses has almost backfired because those plants were federally regulated. 'I hate to see any horse go that way, but it was better than starving to death and better than being shipped unregulated on a double-deck trailer to Mexico,' he said."). Increases in the exporting of horses to Mexico for slaughter has had undeniably inhumane consequences. See Lisa Sandberg, *Effort to Rescue Horses Strains Sanctuaries*, Houston Chronicle October 21, 2007, at B1, available at http://www.chron.com/CDA/archives/archive.mpl?id=2007_4446413 ("In September, the Houston Chronicle visited a municipal plant in Juarez, Mexico, where horses—90 percent of them from the United States—were paralyzed with knife hacks, then hoisted upside down and their throats slit. . . . Killing them with captive bolt guns had been the standard at U.S. plants, but court rulings this year closed those operations.").

Accordingly the ending of regulated and inspected horse processing in the United States has had direct negative consequences for the avowed state interest in humane treatment of horses cited by the Court of Appeals; it is perhaps for this reason that the State of Illinois did not advance this questionable rationale itself. But there have been additional indirect negative consequences as well. While Petitioner's facility and others in the United States were operating, scientists and veterinarians who work on horse welfare issues had been able to make use of populations of processed horses to conduct studies on equine

diseases and other horse welfare issues.[4] And study of the disease equine piroplasmosis has been hindered by the unavailability of a domestic slaughter horse population. See *Report of the Committee on Infectious Diseases of Horses,* United States Animal Health Association, October 21, 2007, http://www.usaha.org/committees/reports/2007/report-hd-2007.pdf, at 4 ("In spite of the best efforts of the Subcommittee [on Equine Piroplasmosis], no progress had been achieved since 2006 in being able to carry out a serosurveillance study for equine piroplasmosis in the U.S. slaughterhouse population due to closure of the three remaining horse slaughter plants in Texas and Illinois before the survey could get underway.").

Amici certainly do not contest the proposition that all States, including Illinois, have a legitimate interest in the humane treatment of horses. But this evidence demonstrates that the Court of Appeals' determination, unsupported by any facts (or even claims) from the State of Illinois itself, that Illinois H.B. 1711 advanced that interest was entirely misplaced. Whether such a law can be upheld based only

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[4] As examples of studies done for the benefit of horses using slaughter populations, see, *e.g.*, C.M. Iacono, *et al.*, *A Preliminary Study On The Utilization Of An Onboard Watering System By Horses During Commercial Transport*, 105 Appl. Anim. Behav. Sci. 227 (2007); T.H. Friend, *et al.*, *Activity Of Unrestrained Horses During On-Truck Rest Stops*, 26 J. Equine Vet. Sci. 573 (2006); T.H. Friend, *A Review Of Recent Research On The Transportation Of Horses*, 79 J. Anim. Sci. (E. suppl.) E32 (2001); M.J. Toscano, *et al.*, *A Note On The Effects Of Forward And Rear-Facing Orientations On Movement Of Horses During Transport*, 73 Appl. Anim. Behav. Sci. 281 (2001).

on judicial supposition and in the face of this and more evidence of its kind presents an important question regarding the role of courts in applying provisions like the Commerce Clause. While the Court of Appeals' simple math (no slaughter = more humane) might be appealing on its face, what horse owners know from daily experience—only a small portion of which is cited herein—demonstrates that judicial guesswork is inadvisable at best and, for the lives of horses, their owners and those that care for and about them, disastrous in reality. This Court should grant the Petition in order to consider what should be required to determine the existence of a legitimate local interest, as well as who should be required to supply it.

B. Without Provision For The Care Of Unwanted Horses, The Illinois Ban On Slaughter Can Only Be A "Step" In The Wrong Direction.

Recognizing that the Illinois ban on the slaughter of horses for human consumption lacked any provision for care of the population of unwanted horses that would inevitably appear and grow if that law went into effect, the Court of Appeals fell back on the notion that a State need not, in a single piece of legislation, solve an entire problem. See Pet. App. 11a (Illinois was entitled "to take one step at a time on a road toward the humane treatment of our fellow animals"). But the authority on which the court relied in calling the Illinois horse slaughter ban such a "step" is

critically distinguishable, in a way that distinctly demonstrates the irrationality of that law.

The proposition that the Constitution does not bar a law that may do good for some, but not for everyone who might benefit from it, is not seriously contestable. For example, in *Bowen v. Owens*, 476 U.S. 340, 346-47 (1986), the Court rejected a claim that furnishing Social Security benefits to one class of survivors was "irrational" because it did not extend to another group of potential beneficiaries. Similarly, *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 488-89 (1955) turned back a challenge to a statute that required a prescription from an ophthalmologist or optometrist in order to fit lenses into eyeglass frames, but that did not apply to the sale of ready-to-wear glasses. In these cases, relied on by the Court of Appeals (Pet. App. 11a), the Court did no more than hold that the initial measures furthered legitimate interests even though they left out additional groups of persons who might have also benefitted from their application.

But it does not follow therefrom that a law that actually *harms* those it purports to help advances a legitimate interest based on speculation that the initial harmful law might someday be converted to a benefit by further measures that may never come about. No case stands for this proposition, and the cases cited by the Court of Appeals present vastly different situations than the instant case. The survivors who received Social Security benefits in *Bowen* and the customers of regulated sellers of custom eyewear in *Williamson* were undisputedly better off because of those laws; the Court, in upholding them,

simply recognized that the legislatures that enacted them did advance their underlying interests, even though they did not do so for everyone they could have. By stark contrast, neither the Court of Appeals nor the State of Illinois have shown, or even tried to show, how a ban on horse slaughter unaccompanied by any provision to care for the unwanted horses that would live longer lives as a result would benefit any horse, any horse owner or anyone else. To the contrary, in staying the District Court's denial of an injunction the Court of Appeals itself pointed out that "the statute does not seem to be intended to protect horses," Pet. App. 45a. And the evidence cited by *Amici* indicates that no benefit has come to anyone; indeed, quite the opposite is the case.

The Court of Appeals never retracted the observation that H.B. 1711 did not seem to be intended to protect horses. Instead it substituted, in the end, the overly simple conclusion that for horses a longer life is by definition a good thing whatever the circumstances, coupled with an unstated (and unsupported) assumption that Illinois would follow through on its interest in the humane treatment of horses by taking further "steps." As noted above, though, the cases on which it relied required no further "steps" to find a benefit to *somebody*, while Illinois H.B. 1711 by itself is directly detrimental to the interest the court relied on in humane treatment of horses. And there is no indication, either in the opinion of the Court of Appeals or in the real world, that the State of Illinois or any other authority has any plans to follow through. While the Court of Appeals mused on the prospect of "old-age pastures" for horses, Pet. App. 11a, the few

such places that exist are already strained to the breaking point as a consequence of the very statute the court upheld, and there are no plans or funds in sight to create more. *Amici* devoutly wish there were; but without such measures, H.B. 1711 cannot properly be considered a "step" toward the humane treatment of horses. Instead it is, and can only be, a step directly and uncontrovertibly in the other direction. See *Horse Protection Act Hearing* at 15 (Testimony of Thomas R. Lenz, D.V.M. ("With a lack of adequate placement opportunities, no funding for long-term care and no mechanism to stop the transport of horses outside the U.S. to processing plants in other countries, [a ban on horse slaughter] will increase the suffering of American horses, not stop it.").

CONCLUSION

Amici curiae respectfully request that the Court grant the Petition for a writ of *certiorari* filed by Petitioners Cavel International, Inc., *et al.*

Respectfully submitted,

THE AMERICAN QUARTER HORSE ASSOCIATION, THE AMERICAN ASSOCIATION OF EQUINE PRACTITIONERS, THE PALOMINO HORSE BREEDERS OF AMERICA, THE PINTO HORSE ASSOCIATION OF AMERICA, THE AMERICAN PAINT HORSE ASSOCIATION, AND THE HORSEMEN'S COUNCIL OF ILLINOIS

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